

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

FRED L. PERRY,

Plaintiff,

v.

Case No. 06-C-0102

**LAB CORP. SUBSTANCE ABUSE
MANAGEMENT INC. and CONCENTRA
MEDICAL CENTER,**

Defendants.

DECISION AND ORDER

On January 23, 2006, the Court received the complaint of Fred Perry (“Perry”) alleging that he, as a requirement of his employment as a commercial driver, submitted to a random drug test, which he failed. (Compl. 4.) Perry claims that this failure resulted in the termination of his employment. (*Id.*) However, he alleges that the test results were prompted not by the ingestion of any illicit drugs, but by cough syrup containing both codeine and morphine. Perry complains that the testing did not conform to federal testing standards established for commercial drivers, and the defendants, who administered the test, were negligent in their procedures. Accordingly, he seeks “an unspecified amount of monetary and punitive damages by [sic] the defendants for negligence.” (*Id.* at 6.)

On July 26, 2006, one of the defendants, Concentra Medical Center (“Concentra”), filed a document entitled “Answer, Affirmative Defenses and Motion to Dismiss.” Under the sub-heading “Motion to Dismiss,” Concentra states:

The plaintiff has failed to state a claim for which relief can be granted and has failed to make any allegations that would support a claim against this defendant for any violation of federal or state law.

The wording of the Complaint itself absolves this defendant of any liability whatsoever and as such, is frivolous on its face.

WHEREFORE, this defendant respectfully requests this case be dismissed as against this defendant, with prejudice and with costs.

As a procedural matter, a motion to dismiss should not be presented in the same filing as a responsive pleading; motions to dismiss are filed before answers. *See* Fed. R. Civ. P. 12(b). Furthermore, Concentra has failed to comply with multiple aspects of this Court’s Civil Local Rule 7.1, which sets forth the procedures for motion practice in this district.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Concentra’s Motion to Dismiss (Docket No. 21) is **DENIED**.

Dated at Milwaukee, Wisconsin this 31st day of July, 2006.

BY THE COURT

s/ Rudolph T. Randa
Hon. Rudolph T. Randa
Chief Judge